

# United States Senate

WASHINGTON, DC 20510

March 21, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Barr:

We write to express our deep concerns with documents suggesting that the Justice Department discussed the possibility of violating the confidentiality of information collected during the decennial census.<sup>1</sup> With the start of peak census operations only 11 months away, we urge you to confirm that the Justice Department and all of its employees will uphold the airtight confidentiality protections for data collected in the census under current law.<sup>2</sup>

The Census Act explicitly prevents the Commerce Department and any of its bureaus or agencies from sharing personally identifiable information collected in the census with any external entity or individual. However, court filings revealed a willingness by staff in the Justice Department to leave open the possibility that the Department would reevaluate an existing legal opinion that no provision within the USA PATRIOT Act could be used to compel the Commerce Secretary to release confidential census information to other federal entities.<sup>3</sup>

Following these reports, U.S. senators sent a letter to Assistant Attorney General Eric Drieband urging the Department to publically reiterate its commitment to existing law governing census data confidentiality.<sup>4</sup> The Department did not respond to the request.

Even consideration of information sharing between the Commerce Department and, for example, the Justice Department or Immigration and Customs Enforcement will have a chilling effect on participation in the 2020 Census. A national study commissioned by the Census Bureau indicated that a last-minute, untested citizenship question “may be a major barrier” to participation, with respondents citing a distrust in the federal government’s commitment to maintaining the confidentiality of census data.<sup>5</sup>

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<sup>1</sup> Hansi Lo Wang, “DOJ, Asked About Census Confidentiality, Crafted Intentionally Vague Answer, *NPR*, 19 Nov. 2018, <https://www.npr.org/2018/11/19/669378077/confidentiality-of-responses-to-u-s-census-may-come-up-for-renewed-debate>.

<sup>2</sup> 13 U.S.C. §8, §9, §214.

<sup>3</sup> Deputy Assistant Attorney General Jeannie S. Rhee, “Census Confidentiality and the PATRIOT Act,” Office of Legal Counsel, U.S. Department of Justice, 4 Jan. 2010, <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2016/03/18/2010-01-04-census-confidentiality.pdf>.

<sup>4</sup> “Schatz, Booker, Reed Demand DOJ Follow Law, Protect Confidential Census Responses,” 26 Nov. 2018, <https://www.schatz.senate.gov/press-releases/schatz-booker-reed-demand-doj-follow-law-protect-confidential-census-responses>.

<sup>5</sup> U.S. Census Bureau, “2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey and Focus Groups: Key Findings for Creative Strategy,” 31 Oct. 2018, <https://apps.npr.org/documents/document.html?id=5026590-Oct-31-2018-Slide-Deck-On-2020-Census-Barriers>.

It is of utmost importance that the 2020 Census—a constitutionally mandated activity—be conducted in a full, fair, and accurate manner to count *all* persons in our country. Any attempt by the Justice or Commerce Departments to diminish the count of particular communities—even indirectly, through actions that agency officials reasonably should know will increase fear that census responses could be used to harm people or their families—would be in contravention of the U.S. Constitution.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



BRIAN SCHATZ  
United States Senator



RICHARD BLUMENTHAL  
United States Senator



JACK REED  
United States Senator



RON WYDEN  
United States Senator




CORY A. BOOKER  
United States Senator



TOM UDALL  
United States Senator



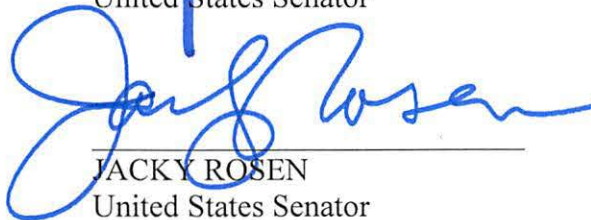
BENJAMIN L. CARDIN  
United States Senator



ELIZABETH WARREN  
United States Senator



CATHERINE CORTEZ MASTO  
United States Senator



JACKY ROSEN  
United States Senator



JEFFREY A. MERKLEY  
United States Senator



PATTY MURRAY  
United States Senator

*Kirsten Gillibrand*

KIRSTEN GILLIBRAND  
United States Senator

*Mazie Hirono*

MAZIE K. HIRONO  
United States Senator

*Amy Klobuchar*

AMY KLOBUCHAR  
United States Senator

cc: The Honorable Wilbur Ross  
Secretary  
U.S. Department of Commerce

Dr. Steven Dillingham  
Director  
U.S. Census Bureau